

UPDATED INFORMATIVE DIGEST

The Division of State Hearings undertook an extended process of consultation with stakeholders, including claimants' advocates as well as county or departmental appeals representatives who take part in fair hearings conducted by the State Hearings Division. This has sometimes been called the "SB 320 Process" because the stakeholder group to discuss due process rights and efficiencies for state hearings began during discussion of legislation proposed during the 2011-2012 legislative session.

The proposed amendments relate to changes proposed by the stakeholder group, including those listed below and also update existing regulations for consistency with statutory amendments enacted since the last regulatory amendments in 2007.

Authorized Representatives

Existing law permits a claimant in a state hearing to authorize a representative in writing and designate a lead representative if multiple persons or organizations are authorized. Existing law provides that a person who is incompetent to designate a representative may be represented under certain circumstances. The proposed amendments implement new legislation setting standards for representation of an incompetent person, as required by amendments adding Section 4014.5 to the Welfare & Institutions Code. The proposed amendments also clarify the rights of a court-appointed conservator to represent the claimant at hearing and the consequences if an agency neglects to provide notices to the authorized representative as required by law.

Civil Rights Claims

Existing law requires the Division of State Hearings to refer civil rights claims to the California Department of Social Services' (CDSS) Civil Rights Bureau. The proposed amendments require civil rights claims related to the Department of Health Care Services (DHCS) to be referred to the Office of Civil Rights within DHCS and correct a reference to regulations governing civil rights claims.

Clarification and Cross-Referencing

Without changing existing law, the proposed amendments clarify existing regulations and provide cross-references to related rules. Proposed clarifications include additions to the list of social services programs subject to hearing, limits to the 90-day look-back rule, application of regulations to the DHCS definitions of "good cause" for delay, the right to a hearing based on agency inaction, the dismissal of moot issues, and rehearings requested on the basis of new evidence.

The proposed cross-references refer to provisions on adequate notice, authorized representatives, deceased claimants, time limits for requesting a hearing, noncompliance with subpoenas, and child support services as aid pending a hearing.

Conditional Withdrawals of Requests for Hearing

Existing law allows a claimant to withdraw a hearing request conditionally, based on the agency's agreement to reconsider the disputed issue within 30 days. The proposed amendments provide for dismissing or reinstating the conditionally withdrawn hearing request and the continuation of aid pending a hearing until the notice of redetermination is issued.

Determinations of Evidentiary Privilege

Existing law permits an Administrative Law Judge (ALJ) to exclude from a state hearing any evidence privileged from disclosure under the California Evidence Code. The proposed amendments require any claim of privilege and any objections to the claim made on the record. The proposed amendments also clarify that evidence included in the record is available for review by any party and evidence excluded from the record cannot be considered by the hearing ALJ.

Dismissals

Existing law permits dismissal of a claim when an identical issue has been the subject of a previous state hearing. The proposed amendments limit these dismissals to cases where the issue has been decided on the merits previous hearings involving the same claimant.

Electronic Records

The proposed amendments update state hearing procedures to allow for electronic filing of requests for hearing and acknowledge the use of electronic benefit transfer cards.

Rehearings

Existing law allows a party to request a rehearing within 30 days after a decision is issued. The request must be in writing and must specify the reason for the request. The proposed amendments provide that, if the request is because of new evidence, the new evidence must either be provided with the request or the requesting party must explain why the evidence is not being provided.

Resources Family Approval Program

Existing law created the Resource Family Approval process for approving the homes of persons seeking to provide foster care to a related child. The proposed amendments add Resource Family Approval decisions to the list of public social services subject to state hearings and update regulations regarding the identities of claimants and their right to notice and state hearing in conformity with Resource Family Approval laws.

Subpoenas

Existing law allows an ALJ to issue subpoenas. The proposed amendments allow an ALJ to refer cases of noncompliance with subpoena to the CDSS head for action under Government Code section 11187.

Statements of Position

Existing law requires the agency to prepare a statement of its position summarizing the facts of each case for hearing and stating the regulatory justification for the disputed action. The proposed amendments provide for cases where the agency is unable to discern the disputed issue.

Anticipated Benefits

These proposed regulations modernize CDSS procedures by providing electronic communication, clarifies ambiguities in previous regulations, and responds to stakeholder requests for additional clarity and protections.

Post-hearing changes:

The regulations were noticed on May 5, 2017. Testimony was received during the 45-day public comment period and changes were made to the proposed regulations as a result of the testimony. Those changes include:

Amending Section 22-001(c)(2)(H) by striking the sentence, "However, there is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court."

Amending Section 22-001(c)(5) to correct the citation format for 22-001(c)(7).

Amending Sections 22-001(f)(1)(A)(4-6) to correct the format of the numbering.

Amending Section 22-009.23 to add the language "to a state hearing."

Amending Section 22-045.222 to change the word "section" to "sections."

Amending Section 22-045.3 to show the change from ten to 15 days.

Amending Sections 22-045.4 and .41 through .44 to make a minor grammatical change to clarify that the word "necessary" applies to information received from any listed source, and not just claimants. The word "set" in subsection 22-045.41 and "reset".43 is changed to "scheduled" and "rescheduled," respectively, to be consistent with other Division 22 phrasing, which refers to scheduling hearings. CDSS is amending subsections 22-045.41 and .42 to refer to the various means the agencies currently use to communicate with claimants, including the requirement to have permission and comply with state and federal privacy laws regarding electronic communications.

Amending Section 22-050.23 to add the phrase "and any response to an objection."

Amending Section 22-051.43 to add the provision that at the hearing, the party requesting a subpoena may respond to any objection stated by or on behalf of the witness or responding party.

Amending Section 22.051.7 to capitalize the word "Department" for consistency.

Amending Section 22-054.211(b)(3)(B) to change the phrase "both parties" to "the parties" to reflect that more than one party may have actions to carry out under the agreement.

Amending Sections 22-054.211(b)(3)(C), (D), and (E) to correct the citation to Section 22-071 from Subsection (c) to Subsection (e). The CDSS added the phrase "original hearing" to modify the hearing request to differentiate it from a hearing request based upon the redetermination notice. In Subsection (E), CDSS amended the regulation to clarify that the agreement must be signed by the parties to be reported for compliance issues.

Amending Section 22-054.38 to remove passive voice and clarify that the ALJ makes the determination of whether an issue is moot. The CDSS also modified the proposed language to clarify that an ALJ may only dismiss an issue as moot based on evidence that the issue has been fully resolved by a final action. Requiring proof that the issue was resolved by final action is necessary to protect the Claimant's right to hearing.

Amending Section 22-062.5 to make a minor change to the sentence structure to have the same title structure for the listing of the Office of Civil Rights for both CDSS and DHCS.

Adding Section 22-065.125 to clarify that the Department will not deny a hearing solely because a party requesting a rehearing on the grounds of new evidence failed to include that evidence with the request for rehearing.

Amending Section 22-065.152 to change "the adequate notice" to "an adequate notice."

Amending Section 22-065.9 to add the phrase "assigned to rehearing."

Amending Section 22-071.1 by correcting the citation to 22-001(c)(3), by inserting the parentheses to Subsection "c" and removing the hyphen in "c-(3)", in 22-071.1(h).

Amending Section 22-072.5 by added hyphens to the phrase "Welfare to Work."

Amending Section 22-073.251(c) to move the word "disputed" before "county action."

Amending Section 22-073.252 by clarifying that the county must provide the statement of position to the claimant electronically, if the claimant requests this form of receipt and the county can comply with federal and state privacy laws.

Amending Section 22.085.42 to delete an extraneous word and changing the phrase "in this Section" to "in Section."